



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

AND

THE HONOURABLE MRS. JUSTICE R. THARANI

W.P. (MD) No. 22249 of 2017

and

W.M.P. (MD) No. 18540 of 2017

Gnanapazhamoorthi

: Petitioner

Vs.

1. The District Collector,
Karur District,
Karur.

2. The Tahsildar,
Krishnarayapuram Taluk,
Karur District.

3. The Revenue Inspector,
Kattalai Firka,
Krishnarayapuram Taluk,
Karur District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 28.11.2017 on the file of the third Respondent and quash the same as illegal and consequentially, direct the first Respondent to take necessary steps to change the Classification of the Land and to issue Patta to the Petitioner's House No.88A, situated in Survey No.166/1 of Mayanoor Village.

For Petitioner

: Mr.N.Anandakumar

For Respondents

: Mr.G.Muthukkannan,
Government Advocate

O R D E R

[Order of the Court was made by **M. VENUGOPAL, J.**]

Heard the Learned Counsel for the Petitioner and the Learned Government Advocate appearing for the Respondents 1 to 3.

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2. No counter is filed on behalf of the Respondents 1 to 3.



3. By consent, the main Writ Petition itself is taken up for final disposal at the stage of admission.

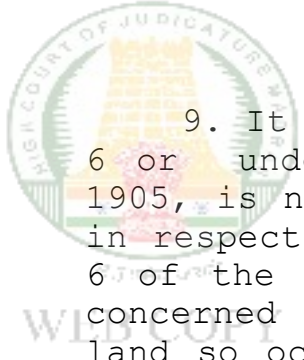
4. According to the Petitioner, he is residing in a Government Poramboke Land classified as 'Santhaipettai' in Survey No.166/1 of Mayanoor Village measuring an extent of 0.00.73 Square Metres for the past several years. He was allotted with a door number and electricity connection was provided to him and in fact, the house tax and water tax have been collected from him for the past several years. He was issued with the Family Card and Aadhar card.

5. At this stage, the Learned Counsel for the Petitioner points out that in the Petitioner's Village, there are more than 60 families living around the Weekly Market area and the said Weekly Market is situated in Survey No.166/2 of Mayanoor Village, which comes under the Jilla Board and more than 60 families are living in adjacent Survey Nos.166/1 and 166/4 and all the people are living there for the past several years and most of them are below the poverty line and belong to Scheduled Caste Community.

6. It appears that on earlier occasion, a Writ Petition in W.P.(MD)No.18263 of 2016 was filed by one Selvakumar as Public Interest Litigation praying for a direction to remove the encroachment in and around the Weekly Market in Mayanur and this Court was pleased to direct the Tahsildar, Krishnarayapuram Taluk, Karur District, to take appropriate action in accordance with law, pursuant to the communication dated 19.01.2016 issued by the second Respondent therein and further, notice to the affected parties was directed to be issued before causing removal of encroachment and that exercise was directed to be completed, within a period of two months from the date of receipt of copy of the order.

7. The main grievance of the Petitioner is that without providing an opportunity to him, straightaway the second Respondent/Tahsildar, Krishnarayapuram on 10.11.2017 had issued a notice dated 01.11.2017 (under Section 7 of the Tamil Nadu Land Encroachment Act, 1905) to the Petitioner, directing him to show cause as to why action shall not be taken under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. In fact, the Petitioner was directed to give a reply before 15.11.2017. It appears that notice in question was issued to the Petitioner and other Villagers only on 10.11.2017.

8. It comes to be known that the Petitioner had caused a detailed reply on 20.11.2017 to the second Respondent/Tahsildar, Krishnarayapuram and it appears that the second Respondent/Tahsildar, Krishnarayapuram, without considering the representation of the Petitioner dated 20.11.2017, had issued the notice dated 28.11.2017 under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, through the third Respondent, without application of mind and jurisdiction.

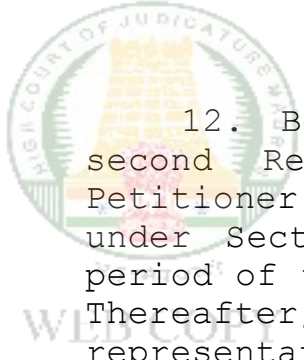


9. It is to be noted that the issuance of notice under Section 6 or under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, is not an empty formality and for eviction of an individual in respect of an unauthorized occupation of a land, under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, the Authority concerned is to serve a notice on the said person specifying the land so occupied and calling upon him/her to show cause before a particular date as to why he/she should not be proceeded against under Section 6 of the Act, 1905. It cannot be gainsaid that a forcible/coercive eviction by the Revenue Authorities without adhering to the well established legal requirements of Section 6 and Section 7 of the Tamil Nadu Land Encroachment Act, 1905, is impermissible in the eye of law.

10. It is to be remembered that even in respect of a notice issued under Section 6 of the Act, there is a right of Appeal being provided under the Act as an alternative remedy before the competent/appropriate Authority under the Act, 1905. However, in the present case, the Petitioner has not resorted to the filing of an Appeal before the concerned Authority. In regard to the facts and circumstances of the instant case, it is not in dispute that Section 7 notice was issued to the Petitioner earlier and a reply dated 20.11.2017 was sent by the Petitioner addressed to the second Respondent. However, the same was not looked into by the second Respondent. Per contra, the second Respondent, for reasons best known to him, had issued the impugned notice dated 28.11.2017 through the third Respondent. As on date, no final orders were passed by the concerned Authorities in regard to the reply of the Petitioner dated 20.11.2017 for the Section 7 notice issued to him on 01.11.2017. When no final orders, as on date, have been passed by the Authorities concerned, this Court is of the considered view, without passing such final orders on the said representation/reply of the Petitioner dated 20.11.2017, issuance of the impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 28.11.2017 (issued on 29.11.2017) is per se not correct in the eye of law. When the subject matter in issue is very much still wide-open and at large and no final orders have been passed in respect of the representation/reply of the Petitioner dated 20.11.2017 for the issuance of notice under Section 7 of the Act, 1905 dated 01.11.2017, this Court is of the considered view that the issuance of notice under Section 6 of the Act, 1905, dated 28.11.2017 addressed to the Petitioner is an illegal one and the same is liable to be set aside by this Court, in furtherance of substantial cause of justice. Viewed in that perspective, this Court interferes with the impugned notice dated 28.11.2017 of the third Respondent and sets aside the same, to prevent an aberration of justice. Consequently, the Writ Petition succeeds.

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11. In fine, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.



12. Before parting with the case, this Court directs the second Respondent to look into the representation of the Petitioner dated 20.11.2017 (in regard to the issuance of notice under Section 7 of the Act, 1905, dated 01.11.2017), within a period of ten days from the date of receipt of copy of this order. Thereafter, if the second Respondent finds any substance in the representation of the Petitioner dated 20.11.2017, he is to pass a reasoned speaking order on merits, of course, with qualitative and quantitative reasons, by providing necessary opportunity to the Petitioner and others concerned, after following the Principles of Natural Justice. It cannot be gainsaid that it is open to the Petitioner to raise all Factual and Legal Pleas before the second Respondent and the second Respondent, in turn, is directed to deal with the every Factual/Legal plea at the time of passing the final orders in the subject matter in issue in a complete and comprehensive manner, within a period of four weeks thereafter. Till such time, the possession of the Petitioner in the subject property shall not be disturbed by anyone in whatsoever manner.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Karur District,
Karur.

2. The Tahsildar,
Krishnarayapuram Taluk,
Karur District.

3. The Revenue Inspector,
Kattalai Firka,
Krishnarayapuram Taluk,
Karur District.

+ 1 cc TO Mr.N.Anandakumar , Advocate in SR No. 91246
+ 1 cc TO The Special Government Pleaderin SR No. 91475

SML

AE/SKN RSK/SAR1/14.12.2017/4P/6C

Order made in
W.P. (MD) No.22249 of 2017
Dated: 05.12.2017
(7/11)